

Appl. No. : 10/624,728
Filed : July 21, 2003

SUMMARY OF INTERVIEW

A telephonic interview was conducted between the Examiner and Applicant's representatives, Sanjivpal S. Gill and Ali Alemozafar, on August 2, 2006.

Identification of Prior Art Discussed

U.S. Patent Nos. 6,228,773 to Cox ("Cox '773"), 6,273,956 to Cox ("Cox'956"), and 6,802,933 to Khan et al. ("Khan").

Exhibit shown

A single sheet was disclosed showing graphical representations of tasks performed in dual processing chambers, as a function of time, for the apparatuses of two embodiments of Cox '773 and Cox '956 (Figures 15 and 16, top two graphs) and a preferred embodiment of Applicant's Claim 12 invention (bottom graph). A copy of this exhibit is attached hereto as Exhibit A.

Identification of Claims Discussed

Claims 1 and 12.

Proposed Amendments

No amendments were discussed.

Principle Arguments and Other Matters

Regarding the §102(f)/(g) rejection of Claim 12 in view of Cox, Mr. Gill reminded the Examiner that *In re Bernhart* (417 F.2d 1395, 163 U.S.P.Q. 611 (C.C.P.A. 1969)) is highly relevant, in that by reciting a computer configured to perform the tasks articulated in the final subparagraph of the claim, Applicant has distinctly (and positively) defined structural features which must be given patentable weight by the Examiner. Mr Gill argued that Cox does not teach or suggest a computer configured to repeatedly synchronously and alternately control power source application, robot movement, chamber processing, and a pump, the computer configured

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to control the pump and the robot to effect pump-down and subsequent process pumping of one of two chambers during simultaneous venting, workpiece removal and workpiece reloading of the other of the two chambers, such that said pump-down pumping of one of the chambers and said venting of the other of the chambers begin at substantially the same time, and the computer being configured to open the pump to fluid communication with only one of the chambers at a time, as recited in Claim 12.

Mr. Gill argued that Cox defines “zero overhead” as conducting all overhead tasks in one chamber during processing in another chamber (col. 9, lines 42-48). As Cox’s definition of “overhead” includes pump-down (col. 2, lines 44-52), Cox’s disclosure of “zero overhead” involves simultaneous pump-down in one chamber and process pumping in another chamber. Based on Cox’s definitions, Claim 12 cannot encompass Cox’s “zero overhead” system because the claim requires pump-down followed by process pumping in one chamber during simultaneous venting, workpiece removal and workpiece reloading in another chamber (*see* Exhibit A, bottom graph). In other words, the claimed system does not involve simultaneous pump-down in one chamber and process pumping in another chamber. Additionally, Cox’s “zero overhead” implies no downtime of the chambers. In contrast, the present application recognizes that Cox’s dual pump and single pump embodiments actually involve a slight downtime in practice. Further, the claimed system obtains the benefit of a reduction in equipment costs, and the present application recognizes that such benefit involves a sacrifice in time efficiency (*see* Exhibit A, bottom graph, showing significantly increased downtime in each of the two chambers).

Mr. Gill argued that the §102(f)/(g) rejection can be overcome by showing that Cox’s claimed invention and the presently claimed invention are substantially different in nature and scope. The Examiner disagreed without articulating any alternative standard for overcoming the rejection.

With respect to the double patenting rejection of Claim 12, Mr. Gill argued that none of Cox’s claims recites or suggests the limitations of the final subparagraph of the claim, such as a computer configured to simultaneously start pump-down pumping of one chamber while venting another chamber. The Examiner appeared to concede this point.

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With respect to the §103 rejection of Claim 12, Mr. Gill argued that the combination of Cox and Khan does not meet the claim language because neither reference teaches or suggests a computer configured to perform the tasks recited in the final subparagraph of the claim. The Examiner appeared to concede this point.

Results of the Interview

The Examiner indicated that the computer tasks of the final subparagraph of Claim 12 (*i.e.*, “a computer configured to...”) may be nonobvious.

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REMARKS

Prior to this Amendment, Claims 1, 3-12, and 18-25 were pending. Claims 1 and 3-11 are herein canceled without prejudice, leaving Claims 12 and 18-25 pending. Reconsideration and allowance of this application, as amended, is respectfully requested.

Applicant thanks the Examiner for discussing the rejections with Applicant's representatives on August 2, 2006. These remarks are based partly on that telephonic interview. Applicant submits that this application is in condition for allowance and such action is earnestly requested. Each of the Office Action's reasons for rejection is addressed below.

Section 102(f)/(g) Rejections

Claims 12 and 18-25 are rejected under 35 U.S.C. § 102(g) and possibly (f) as being directed to the same invention as that of Claims 1-28 of Cox '773 or Cox '956. Office Action at page 2. The Examiner asserts that "elements cited in each Figure 15" of Cox '773 and Cox '956 "correspond directly to Applicant's invention of Figure 2A." Office Action at page 11. Applicant respectfully disagrees with this rejection.

Section 102(f) Rejection

Applicant notes that the two Cox patents are prior art to the present application under 35 U.S.C. § 102(b), and as such there is no real question of whether Applicant derived the claimed invention from Cox. Cox was in the public domain when the present application was filed. In fact, the present application acknowledges the Cox patents in paragraph [0003] of the specification. Applicant asserts that the pending claims are improvements over the Cox disclosure and should be evaluated in the context of 35 U.S.C. §§ 102(b) and 103. The patentable improvements of the present claims over Cox are addressed below.

The mere fact that an application may claim subject matter that is disclosed, made obvious, and/or claimed by a prior art patent (which, as explained elsewhere herein, is not true in the present case) does not in and of itself give rise to a rejection under section 102(f). If that were true, then *every* section 102(b) or 103(a) rejection would also give rise to a section 102(f) rejection, which is clearly incorrect.

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Further, merely citing the Cox patents themselves does not meet the standards for a section 102(f) rejection. "Where it can be shown that an applicant 'derived' an invention from another, a rejection under 35 U.S.C. § 102(f) is proper." M.P.E.P. § 2137; *Ex parte Kusko*, 215 USPQ 972, 974 (Bd. App. 1981) ("most, if not all, determinations under section 102(f) involve the question of whether one party derived an invention from another"). "Derivation requires **complete conception** by another and communication of that conception by any means to the party charged with derivation prior to any date on which it can be shown that the one charged with derivation possessed knowledge of the invention." M.P.E.P. § 2137 (emphasis added); *Kilbey v. Thiele*, 199 USPQ 290, 294 (Bd. Pat. Inter. 1978). "Communication of a complete conception must be sufficient to **enable** one of ordinary skill in the art to construct and successfully operate the invention." M.P.E.P. § 2137 (emphasis added); *Hedgewick v. Akers*, 497 F.2d 905, 908 (CCPA 1974). See also *Gambro Lundia AB v. Baxter healthcare Corp.*, 110 F.3d 1573, 1577 (Fed. Cir. 1997) (Issue in proving derivation is "whether the communication enabled one of ordinary skill in the art to make the patented invention.").

In this case, the Office Action does not provide sufficient evidence to suggest that Applicant derived his inventions from Cox. In particular, the Office Action does not show that Cox **completely conceived** the presently claimed inventions, or that any communication of such conception from Cox to Applicant was sufficient to **enable** one of ordinary skill in the art to construct and operate Applicant's inventions. As noted above, Claim 12 recites, *inter alia*, a computer configured to control the pump and the robot to effect pump-down and subsequent process pumping of one of the chambers during simultaneous venting, workpiece removal and workpiece reloading of the other of the chambers, such that said pump-down pumping of one of the chambers and said venting of the other of the chambers begin at substantially the same time. As explained below, the Cox patents do not disclose or claim these features. Hence, the Cox patents alone do not establish that Cox conceived these limitations or could have communicated anything that would enable these limitations.

Note that, in supporting its §103 rejection of Claims 12 and 18-25 (see below), the Office Action asserts that Cox **does not teach** "a computer configured to repeatedly synchronously and alternately control the power source...as claimed by claim 12," (see Office Action at page 9). Applicant submits that the §102(f)/(g) rejection of Claims 12 and 18-25 is inconsistent with the

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reasoning behind the Examiner's §103 rejection of the claims, for if Cox does not teach "a computer configured to...", as recited in the final subparagraph of Claim 12, the §102 rejection is improper.

Claim 12 is not directed to the same invention as Cox because Cox does not teach or claim a computer configured to perform the functions recited in Claim 12, including to control the pump and a robot to effect pump-down and subsequent process pumping of one of the chambers during simultaneous venting, workpiece removal and workpiece reloading of the other of the chambers, such that said pump-down pumping of one of the chambers and said venting of the other of the chambers begin at substantially the same time. *See* Exhibit A, bottom graph. For example, Cox begins a sequence of venting, processed workpiece unload, unprocessed workpiece load, and pump-down of a first chamber at the same time that process pumping and workpiece processing begins in a second chamber. *See* Cox '956, col. 8, lines 32-37, and Exhibit A, first two graphs. After pump-down pumping is completed in the first chamber and process pumping and processing is completed in the second chamber, the chamber sequences are switched. As such, the pump-down pumping of the first chamber begins well before venting begins in the second chamber. Thus, Cox does not teach or suggest a system in which pump-down pumping of one chamber *begins at substantially the same time* as venting of the other chamber.

In supporting the §102(f)/(g) rejection of Claims 12 and 18-25, the Examiner alleges that Cox's teaching of a computer configured to operate under "near zero" overhead conditions effectively implies the limitations of the computer recited in the final subparagraph of Claim 12. Office Action at page 13. Applicant respectfully disagrees with the Examiner's contention, because "near zero overhead" does not teach or imply the specifically recited sequence of the "computer configured to..." language of Claim 12. As explained by Applicant's representative during the aforementioned telephonic interview, Cox defines "zero overhead" as conducting all overhead tasks in one chamber during processing in another chamber. Cox '773, col. 9, lines 42-48. Since Cox's definition of "overhead" includes pump-down pumping (Cox '773, col. 2, lines 44-52), Cox's disclosure of "zero overhead" involves simultaneous pump-down pumping in one chamber and process pumping in the other chamber. Based on Cox's definitions, Claim 12 does not encompass Cox's notion of a "zero overhead" system, because the claim requires pump-down pumping and process pumping in one chamber during simultaneous venting, workpiece

removal, and workpiece reloading in the other chamber. In other words, the claimed invention does not involve simultaneous pump-down pumping in one chamber and process pumping in the other chamber, as is implied from Cox's definition of "zero overhead."

This is illustrated in Exhibit A, which shows the processing tasks conducted in each chamber, as a function of time, for Cox's dual pump embodiment (Fig. 16), Cox's single pump embodiment (Fig. 15), and an embodiment of Claim 12. Both of Cox's embodiments initiate venting in one chamber at the same time as initiating process pumping in the other chamber. Both of Cox's embodiments involve simultaneous pump-down pumping in one chamber and process pumping in the other chamber. Cox's dual pump embodiment employs a dedicated pump-down pump 98, which allows process pump 96 to remain on for the entirety of each processing phase. Cox's single pump embodiment requires the pump to switch during the processing phase of one chamber to a pump-down operation of the other chamber. Cox actually teaches that the process phase in one chamber ends at about the same time as the pump-down phase ends in the other chamber. However, the present application recognizes that Cox's overhead tasks in practice tend to last a bit longer than the processing in the other chamber (which is why the overhead tasks in the Cox embodiments of Exhibit A terminate slightly after the corresponding process phase). Since Cox's embodiments do not in practice achieve Cox's stated goal of zero or near-zero overhead (as defined by Cox), Applicant recognized that Cox's goal can advantageously be discarded to gain the benefit of a reduction in equipment costs (using only one pump) while process pumping during the entirety of each process phase, simply by modifying the sequence to conduct pump-down pumping and subsequent process pumping in one chamber during simultaneous venting, unloading, and reloading in the other chamber, as shown in the third graph of Exhibit A.

Thus, Applicant asserts that Cox's disclosure of "zero overhead" does not imply the claimed limitations of a computer configured to control the pump and the robot to effect pump-down and subsequent process pumping of one of the chambers during simultaneous venting, workpiece removal and workpiece reloading of the other of the chambers, such that said pump-down pumping of one of the chambers and said venting of the other of the chambers begin at substantially the same time.

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For these reasons, Applicant submits that Cox does not disclose, suggest, or claim all of the limitations of Claim 12. Thus, the record does not suggest that Applicant could have derived his invention from Cox. Even if Cox disclosed everything in the Cox patents to Applicant, that disclosure would not enable Applicant's Claim 12 because it would not enable the limitations in the last subparagraph of the claim. Further, nothing herein should be interpreted as suggesting that there are not additional limitations of Claim 12 that are not disclosed or suggested by the Cox patents.

The Interview Summary mailed on August 4, 2006, in regard to Applicant's questions on how to remove the Section 102(f) and 102(g) rejections, points to the statement in M.P.E.P. 2137 that "[a] prior art reference that is not a statutory bar may be overcome by two generally recognized methods": an affidavit under 37 CFR 1.131, or an affidavit under 37 CFR 1.132 'showing that the relevant disclosure is a description of the applicant's own work'" (citing *In re Costello*, 717 F.2d 1346, 1349 (Fed. Cir. 1983). However, the present scenario is distinguishable from *Costello*, in which the parties agreed that a prior art reference forming the basis of an obviousness rejection did in fact disclose the subject matter sought to be claimed. *Costello*, 717 F.2d at 1348 ("[the prior art reference] discloses but does not claim the invention that is the subject matter of the ... application"). In contrast, Cox does not disclose or enable the subject matter of Claim 12, as explained above. Accordingly, there is no need for Applicant to submit an affidavit under 37 C.F.R. § 1.131 or § 1.132. The mention of a section 1.132 affidavit is particularly inapplicable. Since Cox does not disclose, suggest, or claim Applicant's claimed invention, there is no "relevant disclosure" of Cox that Applicant should be required to show to be a description of Applicant's own work.

Further, the M.P.E.P. statement to which the Interview Summary refers indicates that affidavits under 37 C.F.R. § 1.131 or 1.132 can overcome a prior art reference "that is not a statutory bar." In the present case, the Cox patents are prior art under 35 U.S.C. § 102(b). If the Cox patents did in fact disclose or make obvious the claimed subject matter (they do not), as asserted by the Examiner, then the Cox patents would create a statutory bar against patentability, and there would be no sense in filing such affidavits. For these reasons, the Interview Summary's suggestion to file such affidavits is not appropriate.

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Accordingly, Applicant respectfully requests that the §102(f) rejection of Claims 12 and 18-25 be withdrawn.

Section 102(g) rejection

M.P.E.P. § 2138 sets forth the requirements for basing an *ex parte* rejection of a patent claim on 35 U.S.C. § 102(g):

“35 U.S.C. 102(g) may form the basis for an *ex parte* rejection if: (1) the subject matter at issue has been actually reduced to practice by another before the applicant’s invention; and (2) there has been no abandonment, suppression or concealment... To qualify as prior art under 35 U.S.C. 102(g), however, there must be evidence that the subject matter was actually reduced to practice, in that conception alone is not sufficient... While the filing of an application for patent is a constructive reduction to practice, the filing of an application does not in itself provide the evidence necessary to show an actual reduction to practice of any of the subject matter disclosed in the application as is necessary to provide the basis for an *ex parte* rejection under 35 U.S.C. 102(g). Thus, absent evidence showing an actual reduction to practice (which is generally not available during *ex parte* examination), the disclosure of a United States patent application publication or patent falls under 35 U.S.C. 102(e) and not under 35 U.S.C. 102(g).”

M.P.E.P. § 2138. Thus, even if the Cox patents disclosed and/or claimed the subject matter of Claims 12 and 18-25 (which they do not, as explained above), they alone do not qualify as evidence of an *actual* reduction to practice, as required for an *ex parte* section 102(g) rejection. Accordingly, Applicant respectfully requests that the section 102(g) rejection be withdrawn.

Double Patenting Rejections

Claims 12 and 18-25 are rejected under the judicially-created doctrine of obviousness-type double patenting for claiming the same invention as Claims 1-28 of Cox ‘773 and Cox ‘956. The Examiner asserts that although Cox ‘773 and Cox ‘956 do not claim “the added claim 12 limitation of ‘the computer configured to control the pump...,’ it would have been obvious to

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one of ordinary skill in the art at the time of the invention was made to 'program' Cox's computer as taught by Cox." The Examiner asserts that the motivation to program the computer of Cox '773 and Cox '956 is for process automation and optimization. See Office Action at Page 3. Applicant continues to disagree with the double patenting rejection.

According to M.P.E.P. § 804(II)(B)(1), "any obviousness-type double patenting rejection should make clear:

(A) The differences between the inventions defined by the conflicting claims – a claim in the patent compared to a claim in the application; and

(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent."

As discussed in M.P.E.P. § 804(II)(B)(1), a determination of obviousness-type double patenting should be made based on the following factual inquiries:

(A) Determine the scope and content of a patent claim and the prior art relative to a claim in the application at issue;

(B) Determine the differences between the scope and content of the patent claim and the prior art as determined in (A) and the claim in the application at issue;

(C) Determine the level of ordinary skill in the pertinent art; and

(D) Evaluate any objective indicia of nonobviousness.

Applicant notes that *the Office Action does not articulate the differences between the inventions defined by present Claims 12 and 18-25 and those of Cox*, or the reasons why a person of ordinary skill in the art would conclude that the inventions defined in the present claims are obvious variations of the inventions defined in the claims of Cox. Accordingly, the rejections are deficient on this basis alone.

The scope and content of present Claims 12 and 18-25 are different from those of Claims 1-28 of Cox '773 and Cox '956. Present Claim 12 recites, *inter alia*, a computer "configured to repeatedly synchronously and alternately control the power source application, the robot movement, the chamber processing, and the pump, the computer configured to control the pump and the robot to effect pump-down and subsequent process pumping of one of the chambers during simultaneous venting, workpiece removal and workpiece reloading of the other of the

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chambers, such that said pump-down pumping of one of the chambers and said venting of the other of the chambers begin at substantially the same time, and the computer being configured to open the pump to fluid communication with only one of the chambers at a time.”

Claims 1-28 of Cox ‘773 do not recite a computer, let alone a computer with the limitations of abovementioned subparagraph of present Claim 12. Accordingly, Applicant submits that Claims 1-28 of Cox ‘773 do not make obvious present Claims 12 and 18-25. Therefore, present Claims 12 and 18-25 are patentably distinct from Claims 1-28 of Cox ‘773. Accordingly, Applicant respectfully requests that the double patenting rejections of these claims based on Cox ‘773 be withdrawn.

Of Claims 1-28 of Cox ‘956, only Claims 1, 7, 9 10 and 13 recite a computer. However, Claims 1-28 of Cox ‘956 are deficient with respect to the limitations of the computer recited in present Claim 12. Claim 1 of Cox ‘956 merely recites a dual chamber apparatus comprising a computer “for repeatedly synchronously alternately controlling the power source application, the robot movement and the chamber processing.” Dependent Claim 7 of Cox ‘956 adds the limitation that “the computer is programmed such that chamber overhead time substantially does not overlap with the chamber processing time.” Dependent Claim 9 of Cox ‘956 adds the limitation that “the computer is programmed to have a robot wait time of substantially zero between loading an unprocessed workpiece in one of the chambers and unloading a processed workpiece in the other of the chambers.” Dependent Claim 10 of Cox ‘956 adds the limitation that “the computer is programmed to have a robot wait time of near zero between loading an unprocessed workpiece in one of the chambers and unloading a processed workpiece in the other of the chambers.” Dependent Claim 13 of Cox ‘956 adds the limitation that “the computer is programmed such that, alternately and synchronously, all of the odd numbered workpieces are processed in the second chamber and all of the even numbered workpieces are processed in the first chamber, but all workpieces are returned to their original slots in the single cassette.”

The scope and content of present Claim 12 are *clearly very different* from those of Claims 1, 7, 9, 10 and 13 of Cox ‘956. For example, present Claim 12 recites that the computer is configured to control the pump and the robot such that pump-down pumping of one of the chambers and venting of the other of the chambers *begin at substantially the same time* (see Exhibit A, last graph). In contrast, none of Claims 1, 7, 9, 10 and 13 (nor any of the remaining

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claims of Cox '956) recites or suggests these limitations. Claims 1, 7, 9, 10 and 13 of Cox '956 are not concerned with beginning pump-down pumping of one chamber and venting of another chamber at substantially the same time. Therefore, Applicant submits that present Claims 12 and 18-25 are patentably distinct from Claims 1-28 of Cox '956, and respectfully requests that the double patenting rejection of these claims be withdrawn.

Section 103 Rejections

Claims 12 and 18-25 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cox '773 in view of U.S. Patent No. 6,802,933 to Khan ("Khan"). The Examiner has found that Cox '773 teaches all of the limitations of Claim 12, *with the exception of* a computer configured to control the pump and the robot to effect pump-down and subsequent process pumping of one of the chambers during simultaneous venting, workpiece removal and workpiece reloading of the other of the chambers, such that said pump-down pumping of one of the chambers and said venting of the other of the chambers begin at substantially the same time, and the computer being configured to open the pump to fluid communication with only one of the chambers at a time. In overcoming the deficiencies of Cox '773, the Examiner has found that Khan teaches a computer controller for process control of "plural chambers", "robot" and "power." The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to add Khan's computer controller for automating Cox '773's process components. Office Action at pages 6-10. The Examiner also alleges that because Cox teaches Applicant's claimed components, including a controlling computer, "the reference to 'near zero overhead' [of Cox] provides teaching that all the above computer-controlled components are managed in a desired manner to provide 'near zero overhead'." Applicant interprets this statement to mean that Cox's teaching of near zero overhead makes obvious the computer-related limitations of Claim 12.

Applicant respectfully disagrees and submits that the combination of Cox '773 and Khan does not meet the language of Claims 12 and 18-25. Please refer to the above discussion establishing that Claim 12 does not encompass a "near zero overhead" system, upon which the following elaborates: Applicant's invention is based partly on the realization that Cox's apparatus does not always achieve zero overhead conditions, because the overhead tasks (venting, processed workpiece unloading, unprocessed workpiece loading, and pump-down) in

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one chamber take longer than the process step in the other chamber. Since zero overhead conditions are not obtained, Applicant realized that it is possible to modify the operational sequence so that a single pump apparatus can provide process pumping during the entirety of each chamber's processing phase, without sacrificing significant time efficiency. In particular, as shown in the third graph of Exhibit A, Applicant realized that the pump-down step can begin in one chamber while venting begins in the other, an operational modification that *discards the goal of zero overhead efficiency*. In comparison to Cox's dual pump embodiment (Exhibit A, first graph), the claimed invention requires only one pump. In comparison to Cox's single pump embodiment (Exhibit A, second graph), the claimed invention permits process pumping during the entirety of each chamber's processing phase.

Applicant's operational modification is recited in the final subparagraph of Claim 12, which recites a computer configured to control the pump and the robot to effect pump-down and subsequent process pumping of one of the chambers during simultaneous venting, workpiece removal and workpiece reloading of the other of the chambers, such that said pump-down pumping of one of the chambers and said venting of the other of the chambers begin at substantially the same time. Neither Cox '773 nor Khan, either alone or in combination, teaches or suggests this operational sequence. Accordingly, Applicant respectfully requests that the §103 rejection of Claim 12 be withdrawn.

Claims 18-25 recite additional features of advantage and utility. Moreover, these claims are allowable over the combination of Cox '773 and Khan because they depend from and therefore include all of the limitations of Claim 12. The combination of Cox '773 and Khan does not include all of the limitations of Claim 12, let alone the unique combinations of limitations of Claims 18-25. Accordingly, Applicant respectfully requests that the §103 rejection of Claims 18-25 also be withdrawn.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that this application is in condition for allowance. If there is any further hindrance to allowance of the pending claims, the Examiner is invited to contact the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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